IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. ~~741~~ 119

JOHN W. WEBB,

Petitioner,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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CITATIONS.

OTHER REFERENCES.

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Petitioner respectfully petitions this Honorable Court to grant the Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURTS BELOW.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was entered February 23, 1955, and is not reported but is printed in the record filed with the clerk of the Court of Appeals below. (R. 122)

The opinion of the United States Court of Appeals for the Seventh Circuit, reversing said judgment, was filed December 29, 1955, and is not yet reported but is set forth in the Appendix hereto. (App. A.)

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

Date of Judgment to be reviewed, December 29, 1955, (App. B), as amended by order denying rehearing January 30, 1956 (App. C).

Jurisdiction of this Court is invoked under 28 U. S. Code, Section 1254 (1) (App. D).

QUESTIONS PRESENTED FOR REVIEW.

Question I.

In order to prevail under the Federal Employers' Liability Act, need a plaintiff negate all possible inferences of negligence of persons other than the defendant and prove his case by a standard of "probabilities"?

Question II.

Does a Court of Appeals invade the province of a jury and violate the scope of appellate review in a Federal Employers' Liability Act case by setting aside an employee's jury verdict and judgment and directing entry of final judgment for the railroad when the record shows that:

> The employee stepped on a large clinker buried near a switch stand in a soft, new roadbed constructed by the railroad about three weeks before the accident; the railroad's firemen cleaned their fireboxes at this location; the employee's duties required him to work on the ground at this point and the employee and the employer's witnesses testified that a clinker as described made for bad footing and an unsafe place to work?

STATUTES INVOLVED.

28 U. S. Code, Sec. 1254 (1), Appendix D.
45 U. S. Code, Sec. 51, Appendix E.
45 U. S. Code, Sec. 56, Appendix F.

STATEMENT OF THE CASE.

(A)

The Material Facts.

This action was brought by Petitioner, a brakeman in the employ of Respondent, under the Federal Employers' Liability Act, 45 U. S. Code, Secs. 51-60, to recover damages for injuries suffered as a result of the alleged negligence of his employer. (R. 3-5)

Around the middle of June, 1952, extensive repairs had been made by Respondent on its house track at Mount Olive, Illinois. (R. 68) This work included raising the rail and ties about 5 inches above their previous level and the use of about 15 cubic yards of new cinder and chat ballast. (R. 72, 73) During the repairs, the house track was closed for use by the trainmen. (R. 67)

About three weeks after the repair work (July 2, 1952) when uncoupling a car on this house track, Petitioner observed a leaking grain car. He turned around to go to the caboose to get some waste to use as a plug and stepped on a large buried clinker. He had looked at the ground before stepping and it was level, looked like good footing outside of being a little loose. (R. 43) When he stepped on the clinker his foot turned, he was thrown off balance and his leg doubled under him and he sustained injuries. (R. 14) After the accident he saw the clinker

with a hole right by its side. (R. 44) It was partially kicked out of the cinders. (R. 61) It was about the size of his fist. (R. 14)

Petitioner, a man with 25 years railroad experience and a former section hand, testified that it is not a customary practice to use clinkers the size of a man's fist in a railroad road bed. They don't pack down and give good footing. (R. 44) Lester Rector, defendant's section foreman, who had charge of the Mount Olive track raising and new ballasting, said that such a large clinker would not belong in a road bed near a switch stand. (R. 77) John Brosnahan, defendant's track supervisor, testified that one purpose of ballast is to provide safe footing for trainmen. He stated that the presence of a clinker as described and located would represent an unsafe place to work. (R. 87) The cinders were not screened before being used in the new roadbed. (R. 77) The site of the accident was the only place for Respondent's firemen to clean their fire boxes at Mount Olive. (R. 59)

Webb's statement taken by Respondent's claim agent was admitted in by agreement. It states in part:

> "I took one step and stepped on a cinder buried in the loose cinders about a foot from the end of the ties. When I stepped on this cinder it threw me off balance, caused me to fall and I injured my left knee as I fell. This happened about 15 feet south of the house track switch on the east side of the house track. This track had been worked on shortly before this by the trackmen and the cinders were stirred up and loose and this large cinder about six inches in circumference was buried in the loose cinders around it so that it was not discernible from the rest of the small loose cinders. It looked like the surface was level and good enough footing but this cinder being solid in the loose cinders caused my foot to turn as I

stepped on it, turned my foot and caused me to fall so that I injured the cartilage in my knee as I fell." (R. 110)

The applicable statute (45 U.S.C. 51) provides:

> "Every common carrier by railroad * * * shall be liable in damages to any person suffering injury while he is employed by such carrier * * * for such injury * * * resulting * * * by reason of any defect or insufficiency due to its negligence in its * * * track, roadbed * * * or other equipment."

The plaintiff in his complaint charged that defendant failed to use ordinary care to furnish him with a reasonably safe place to work.

The jury returned a verdict for petitioner in the sum of $15,000.00. Judgment was entered on the verdict.

Motions for new trial and for judgment notwithstanding the verdict were denied. (R. 128). On appeal, the Court of Appeals for the Seventh Circuit reversed the judgment and remanded the case to the District Court with directions to enter judgment for respondent. (App. B) Petition for rehearing was denied (App. C).

(B)

Basis for Federal Jurisdiction in District Court.

Jurisdiction in the District Court, the court of first instance, was based upon the provisions of 45 U. S. Code, Section 56. (App. F)

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court of Appeals constituted an invasion of the province of the jury contrary to the Seventh Amendment to the Constitution of the United States.

In recent years this Court has, on many occasions, expressed itself clearly regarding the respective functions of the Court and jury, and the scope of appellate review in cases arising under the Federal Employers' Liability Act.

These decisions include *Tiller* v. *Atlantic Coast Line R. Co.*, 318 U.S. 54 (1942); *Bailey* v. *Central Vermont Ry. Co.*, 319 U.S. 350 (1942); *Tennant* v. *Peoria & P. U. Ry. Co.*, 321 U.S. 29 (1943); *Blair* v. *Baltimore & O. R. Co.*, 323 U.S. 600 (1944); *Lavender* v. *Kurn*, 327 U.S. 645 (1945); *Ellis* v. *Union P. R. Co.*, 329 U.S. 649 (1947); *Myers* v. *Reading R. Co.*, 331 U.S. 477 (1947); *Wilkerson* v. *McCarthy*, 336 U.S. 53 (1948) and *Stone* v. *New York, C. & St. L. R. Co.*, 344 U.S. 407 (1953).

The decision herein complained of is in direct conflict with the foregoing cases on the authority of the jury to draw permissible inferences from the evidence and the right of an Appellate Court to substitute its interpretation of the evidence for the verdict of the jury and the judgment of the trial court.

The conclusion of the Court of Appeals is bottomed on its statement that "there is no evidence as to the agency whereby the hazard was placed in or on the roadbed." (Opinion, App. p. 14)

Following this assertion, the Court of Appeals notes that strangers may frequent the premises and that the line of another railroad is in close proximity to the scene of the accident.

The Court then says that a finding that the defendant placed the clinker in its roadbed as a part of the ballast used in the repair operation can rest on nothing but speculation. (Opinion, App. p. 15)

The Appellate Court infers that a stranger or another railroad could have gone on to defendant's right of way and buried a clinker therein and dismisses the probative evidence of a major repair job (using 15 cubic yards of unscreened cinders and chat) on the railroad done by its own employees three weeks before the accident and an injury caused by a clinker buried in a roadbed which was still soft from new ballast installation.

The Court of Appeals by weighing the evidence and searching the record for conflicting circumstantial evidence has violated the clear mandate of this Court and deprived petitioner of his right of trial by jury. Excerpts from several of the cases construing the F.E.L.A. cited on page 6 demonstrate this to be true.

In *Ellis* v. *Union P. R. Co.*, 329 U.S. 649, (1947) this Court said at page 653:

> "Once there is a reasonable basis in the record for concluding there was negligence which caused the injury, it is irrelevant that fair minded men might reach a different conclusion. For then it would be an invasion of the jury's function for an appellate court to draw contrary inferences or to conclude that a different conclusion would be more reasonable."

Lavender v. *Kurn*, 327 U.S. 645, (1945), holds at page 653:

> "It is no answer to say that the jury's verdict involved speculation and conjecture. Whenever facts are in dispute or the evidence is such that fairminded men may draw different inferences, a measure of speculation and conjecture is required on the part

of those whose duty it is to settle the dispute by choosing what seems to them to be the most reasonable inference."

In *Wilkerson* v. *McCarthy*, 336 U.S. 53 (1948), this Court stated at page 63:

> "In reaching its conclusion as to negligence, a jury is frequently called upon to consider many separate strands of circumstances, and from these circumstances to draw its ultimate conclusion on the issue of negligence. * * * For these reasons, the trial court should have submitted the case to the jury. * * *"

In a concurring opinion it is said at page 70:

> "The criterion governing the exercise of our discretion in granting or denying certiorari is not who loses below but whether the jury function in passing on disputed questions of fact and in drawing inferences from proven facts has been respected."

Or as said in *Bailey* v. *Central Vermont Ry. Co.*, 319 U.S. 350, (1942) at page 354:

> "To deprive these workers of the benefit of a jury trial in close or doubtful cases is to take away a goodly portion of the relief which Congress has afforded them."

2. The decision herein is not in accord with the applicable decisions of this Court.

The decision of the Court below is in conflict with the holdings of this Court in *Brown* v. *Western Ry. of Alabama*, 338 U.S. 294 (1949) and *Southern Ry. Co.* v. *Puckett*, 244 U.S. 571, (1917).

These are the only two cases ever decided by this Court involving railroad employees injured by clinkers in or

on the railroad right of way. They are dismissed by the Court of Appeals as "inapposite." (Opinion, App., page 16)

3. The Opinion of the Court below sets forth a standard of proof which is in conflict with the decisions of this Court and its own prior decision.

The opinion of the Court of Appeals says:

> "**There are no probabilities to be deduced from this evidence.** That defendant placed the clinker in its roadbed as a part of the ballast used in the repair operation is merely one of several possibilities present. A finding that it did so can rest on nothing but speculation."

(Opinion, App., page 15)

This part of the opinion is in conflict with the opinion of the same Court of Appeals in *Spotts* v. *Baltimore and Ohio R. Co.*, (1939) 102 F. (2d) 160, a case involving the efficiency of a railroad car brake, where the Court says at page 162:

> "In other words, we cannot say as a matter of law that any and all inferences which the jury might reasonably draw from the evidence would support only a verdict for defendant and not for plaintiff. Nor can we say that, as a matter of law, the contradictory evidence offered by defendant shows that plaintiff's testimony cannot be true. **A contention for such action is an appeal to us to weigh the conflicting evidence in the light of probabilities and thus to invade the exclusive province of the jury, and, on an application for a new trial, of the trial judge. This we may not do.**"

This Court in *Myers* v. *Reading R. Co.*, 331 U.S. 477, 483 (1947) approved the rule in the *Spotts* case and quoted it.

The cases listed on page 6 hereof clearly enunciate this Court's opinion on quantum of proof and the duties and limitations of jurors, trial judges and Courts of Appeal. They set forth in clear, forthright and unmistakable language that if there is any evidence in the record, standing alone and by itself, from which a reasonable inference of negligence may be drawn, the jury must decide the case and its verdict should not be disturbed. None of these cases requires, that "probabilities be deduced from the evidence," as does the Court of Appeals in the opinion complained of.

The opinion and judgment of the Court below, if permitted to stand, will result in prejudice to the substantial rights of petitioner and to other persons whose cases might be decided in a similar fashion, contrary to the decisions of this Court.

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

CARL L. YAEGER,
Attorney for Petitioner.

ROBERT J. RAFFERTY,
Of Counsel.

APPENDIX A

Opinion, United States Court of Appeals For the Seventh Circuit.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 11462 OCTOBER TERM AND SESSION, 1955.

JOHN W. WEBB, *Plaintiff-Appellee,*
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

December 29, 1955.

Before MAJOR, LINDLEY and SWAIM, *Circuit Judges.*

LINDLEY, *Circuit Judge.* This is an action under the Federal Employer's Liability Act, 45 U. S. C. §§ 51 *et seq.*, to recover damages for personal injuries sustained by plaintiff in the course of his employment as a brakeman by defendant, resulting, as he averred, from the negligence of defendant in failing to provide him with a reasonably safe place in which to work. Defendant's motions for a directed verdict made at the close of plaintiff's evidence and at the close of all the evidence were denied, as was its alternative motion for a new trial. It appeals from the judgment entered on the verdict in favor of plaintiff, assigning as error the trial court's action in overruling its motions and in giving certain instructions.

Plaintiff had been employed by defendant in various capacities since about 1925 and was, on July 2, 1952, when the accident occurred, working as a brakeman, being as-

signed to the crew of a local freight run between the cities of East St. Louis and Clinton, Illinois. During the course of his duties, in a switching operation at Mount Olive, he noticed that a wheat car in the train was leaking. While the other crew members continued with the task of picking up cars to be incorporated into the train, he started back to the caboose to get some waste to plug the hole in the leaking car. He turned and, on the first step he took, tripped and fell with his left leg buckled under him. He thereby sustained a serious injury to his left kneecap. The accident occurred on the roadbed of defendant's "house track" at a point about one foot from the end of the ties. After plaintiff fell, he looked to see what had caused him to fall and saw a clinker "about the size of my fist" which was partly out of the ground, and a hole beside the clinker. He picked up the offending object and tossed it aside, proceeded to the caboose, procured some waste and plugged the hole in the leaking car. Plaintiff stated that he looked "at the ground" before he stepped but did not see the clinker. He stated further that the footing on the roadbed looked level but was a little soft.

The principal question presented is whether the court correctly ruled that there was sufficient evidence of negligence to require denial of defendant's motions for a directed verdict and submission of the cause to a jury.

Plaintiff's testimony that his injury was caused by his stepping on a clinker is not contradicted. We shall assume, for the purpose of this decision, that such an object on or in the roadbed constituted a hazard to defendant's employees. But to prevail, it was incumbent on plaintiff to adduce evidence that this hazardous condition was produced or was permitted to continue by reason of defendant's negligence. *Moore* v. *Chesapeake & O. Ry. Co.*, 340 U. S. 573; *Eckenrode* v. *Pennsylvania R. Co.*, 164 F. 2d 996, aff'd 335 U. S. 329 (C. A.-3); *Delaware, L. & W. R. Co.* v. *Koske*, 279 U. S. 7; *Patton* v. *Texas & P. Ry. Co.*, 179 U. S. 658. Fault or negligence may not be inferred from the mere existence of the clinker and the happening

of the accident. *Delaware, L. & W. R. Co.* v. *Koske, supra; Patton* v. *Texas & P. Ry. Co., supra.* The employer is not an insurer that the work place be absolutely safe, but is chargeable only with the duty of exercising reasonable care and diligence to see that the place where work is to be performed is reasonably safe for its workmen. *Ellis* v. *Union Pacific R. Co.*, 329 U. S. 649; *Seaboard Air Line Ry. Co.* v. *Horton*, 233 U. S. 492; *Delaware, L. & W. R. Co.* v. *Koske, supra; Patton* v. *Texas & P. Ry. Co., supra,*

Applying these governing principles, we believe the trial court erred in denying defendant's motions for a directed verdict. The evidence, viewed in the light most favorable to plaintiff, supports the following fact statement. He sustained a serious injury when he stumbled over an unusually large clinker which was embedded, partially at least, in defendant's roadbed. At the point where the accident occurred defendant maintains its mainline track which runs in a north-south direction. Parallel to, and east of, that track, defendant maintains a second track which is referred to in the record as the passing track. The latter is connected to the mainline by switches and a cross-over track. Ingress to the passing track is gained over a switch, known as the "house track" switch. The section of the passing track south of the switch is known as the house track. East of these installations, and connected thereto by switches and a cross-over track, are certain facilities of the L. & N. Railroad consisting of its mainline and house tracks. Plaintiff was standing on the roadbed of defendant's house track approximately twenty feet south of the switch when he noticed the leaking condition of the wheat car. The accident occurred at that spot when he turned toward the caboose and took one step. He was regularly employed on the East Saint Louis-Clinton local and worked frequently at this locale. He did not see the clinker before he fell; during cross-examination of plaintiff, the trial judge characterized his testimony as to his knowledge whether, before the accident, the clinker was completely buried in the roadbed in the following language, "It is self-evident that he does not know, if he did not see it." The physical set-up of de-

fendant's house track had been altered in June, 1952, when the level of the house track switch had been raised five inches. In this operation the ties and rails were raised and sufficient ballast in the form of fine cinders and crushed stone was employed to raise the switch to the required level and the grade of the connecting rails to a compensating elevation. There was no direct testimony that this operation affected the roadbed at the point where the accident occurred, *i.e.*, twenty feet south of the switch, but, for purposes of this opinion, we assume that it was affected. Some fifteen cubic yards of ballast were required to accomplish the end result. Further weight is afforded to our assumption by plaintiff's testimony that the footing at that place was level but a little soft. Three different employees testified that they periodically inspected the trackage at this location for defects in the facilities and hazards existing thereon or nearby. One of these witnesses testified that he had, occasionally, discovered large clinkers in the ballast in his territory and had caused them to be removed. Subsequent questioning of the witness elicited the testimony that the "territory" to which reference is made included more than forty miles of defendant's right of way and mainline. There was no testimony as to conditions at the scene of the accident either before or after the occurrence except plaintiff's testimony that he stumbled over an unusually large clinker which caused his injury.

To make a submissible case it was incumbent on plaintiff to adduce substantial evidence that defendant either negligently placed the clinker in the ballast or was chargeable with notice, either actual or constructive, of its presence therein. *Bevan* v. *New York, C. & St. L. R. Co.*, 132 Ohio St. 245, 6 N. E. 2d 982. We think his proof fails in this respect. There is no evidence as to the agency whereby the hazard was placed in or on the roadbed. Defendant's lines are in close proximity to and are connected with those of the L. & N. Plaintiff testified that the facilities of the two roads were connected to permit the interchange of freight cars between them. A photo-

graphic exhibit which, according to plaintiff's testimony, substantially represents the conditions at the scene of the accident, reveals several buildings in the near vicinity; there is no evidence to show whether these are the property of defendant or of the L. & N. or of some other stranger to the occurrence. The right of way is not fenced, and is, therefore, accessible to the public; there is no evidence as to whether or not the premises are frequented by strangers. There are no probabilities to be deduced from this evidence. That defendant placed the clinker in its roadbed as a part of the ballast used in the repair operation is merely one of several possibilities present. A finding that it did so can rest on nothing but speculation.

Furthermore, were we to hold that it was proper to permit the jury so to speculate, plaintiff still would not be entitled to recovery unless it was allowed also to speculate that it is negligence per se to allow such an object to become mixed in with the fine ballast used in improving its roadbed. Defendant's duty to plaintiff in this respect was to exercise the care of a reasonably prudent person, under the existing circumstances, to prohibit the introduction of a hazard into the roadbed where plaintiff was required to work. Cf. *Seaboard Air Line Ry. Co.* v. *Horton*, 233 U. S. 492; *Missouri Pacific R. Co.* v. *Zolliecoffer*, 191 S. W. 2d 587, 588 (Ark.). Not only is there no evidence that defendant violated that duty, but also, there is a total want of evidence as to what constitutes reasonable prudence under the proved circumstances.

The record is equally lacking in evidence to prove that defendant had actual or constructive notice of the dangerous condition. The testimony as to actual notice is that no one, plaintiff included, knew of the presence of the clinker until the accident occurred. There is substantial undisputed evidence that this portion of defendant's right of way was inspected frequently, with a purpose which included the seeking out and removal of such hazards. The evidence is silent as to what standard of care plaintiff

was entitled to expect and to rely upon. There is no evidence that defendant was remiss in any respect. There is no proof that its inspection of its premises did not meet the required standard, or that a closer, more thorough, inspection would have disclosed the existence of this hazardous situation.

Plaintiff having failed in his burden of proof, it was error to submit the case to the jury and permit it to reach a verdict by pure speculation. The situation is not unlike that disclosed in *Kaminski* v. *Chicago River & I. R. Co.*, 200 F. 2d 1 (C. A.-7). Kaminski, while working in the course of his employment on the premises of a customer of the defendant railroad, was seriously injured when he fell into a hole beside an industry track. We found that there was no evidence as to when and through what agency the hazardous condition was created or as to the railroad's notice, either actual or constructive, of its existence, and held that the trial court erred in overruling the railroad's motion for a directed verdict. A comparable holding is found in numerous cases involving factually similar situations. See *e.g.*, *O'Mara* v. *Pennsylvania R. Co.*, 95 F. 2d 762 (C. A.-6); *Bevan* v. *New York, C. & St. L. R. Co.*, 132 Ohio St. 245, 6 N. E. 2d 982; *Spencer* v. *Atchison, T. & S. F. Ry. Co.*, 207 P. 2d 126 (Cal. App.); *Waller* v. *Northern Pacific Terminal Co.*, 166 P. 2d 488 (Ore.); *Matthews* v. *Southern Pacific Co.*, 59 P. 2d 220 (Cal. App.).

The cases on which plaintiff relies are largely inapposite. In each there was evidence from which the jury might reasonably infer that the defendant either negligently created the dangerous agency involved, or was chargeable with notice of the existence of a condition which rendered unsafe the place where the injured employee was required to work. *Eg.*, *Brown* v. *Western Ry. of Alabama*, 338 U. S. 294; *Southern Ry. Co.* v. *Puckett*, 244 U. S. 571, aff'ing, 16 Ga. App. 551, 85 S. E. 809; *Fleming* v. *Kellett*, 167 F. 2d 265 (C. A.-10); *Waddell* v. *Chicago & E. I. R. Co.*, 142 F. 2d 309 (C. A.-7); *Pitcairn* v. *Hunault*, 86 F. 2d 664 (C. A.-7); *Virginian Ry. Co.* v. *Staton*, 84 F. 2d 133 (C. A.-4); *Smith* v. *Schumaker*, 85

P. 2d 967, cert. denied 307 U. S. 646 (Cal. App.); *Missouri Pacific R. Co.* v. *Zolliecoffer*, 191 S. W. 2d 587 (Ark.); *Tash* v. *St. Louis-S. F. Ry. Co.*, 76 S. W. 2d 690 (Mo.); *McClain* v. *Charleston & W. C. Ry. Co.*, 4 S. E. 2d 280 (S. C.); *Lock* v. *Chicago, B. & Q. R. Co.*, 219 S. W. 919 (Mo.); *Hollaway* v. *Missouri, K. & T. Ry. Co.*, 208 S. W. 27 (Mo.). The only case cited which purports to justify an inference of negligence merely from the existence of an obstruction and the happening of the accident is *Marcades* v. *New Orleans Terminal Co.*, 111 F. Supp. 650. The case was tried by the court without a jury and the evidence is not reported. Insofar, however, as that decision imposes liability merely because of the existence of a hazard without any evidence as to defendant's notice, it rests upon a theory of liability without fault and cannot be reconciled with pronouncements by the Supreme Court that the Act does not make railroads insurers of employee safety. *Ellis* v. *Union Pacific R. Co.*, 329 U. S. 649; *Seaboard Air Line Ry. Co.* v. *Horton*, 233 U. S. 492.

Since we are of the opinion that defendant's motions for a directed verdict should have been allowed, we find it unnecessary to consider other assignments of error. The judgment is reversed and the cause remanded to the District Court with directions to enter judgment for defendant.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B.

Judgment.

(December 29, 1955)

JOHN W. WEBB,
Plaintiff-Appellee,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED with costs, and that this cause be, and the same is hereby REMANDED to the said District Court with directions to enter judgment for the Defendant.

APPENDIX C.

Order Denying Rehearing.

(January 30, 1956)

JOHN W. WEBB,
Plaintiff-Appellee,
No. 11462 *vs.*
ILLANOIS CENTRAL RAILROAD COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be and the same is hereby, DENIED.

APPENDIX D.

Courts of Appeals; Certiorari.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal cases, before or after rendition of judgment of decree. June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. Code, Sec. 1254 (1).

APPENDIX E.

The Federal Employers' Liability Act.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. Apr. 22, 1908, c. 149, Sec. 1, 35 Stat. 65, Aug. 11, 1939, c. 685, Sec. 1, 53 Stat. 1404. 45 U. S. Code, Sec. 51.

APPENDIX F.

Actions; Limitations; Concurrent Jurisdiction of Courts.

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States. Apr. 22, 1908, c. 149, Sec. 6, 35 Stat. 66; Apr. 5, 1910, c. 143, Sec. 1, 36 Stat. 291; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167; Aug. 11, 1939, c. 685, Sec. 2, 53 Stat. 1404; June 25, 1948, c. 646, Sec. 18, 62 Stat. 989. 45 U. S. Code, Sec. 56.